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42640	7590	10/10/2006	EXAMINER	
DILLON & YUDELL LLP 8911 NORTH CAPITAL OF TEXAS HWY SUITE 2110 AUSTIN, TX 78759			KIM, PAUL	
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			2161	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,199

Applicant(s)

FRUHLING ET AL.

Examiner

Paul Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/26/04, 5/19/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is responsive to the following communication: Amendment filed on 12 June 2006.

Response to Amendment

2. Claims 17-41 are pending and present for examination.
3. Claims 1-16 and 42-45 have been cancelled.
4. No claims have been added.

Information Disclosure Statement

5. The information disclosure statements (IDS) submitted on 26 February 2004 and 19 May 2005 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Drawings

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "16" has been used to designate both a "Servo Controller" and a "Response Prioritization Module". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

- Figure 2, Reference characters 28a-c;
- Figure 7, Reference characters 57 and 134;
- Figure 8a, Reference characters 56, 58 and 148; and
- Figure 8b, Reference characters 56, 58, 148, 160 and 162.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. **Claim 17 and 30** are rejected under 35 U.S.C. 102(e) as being anticipated by Jamroga et al (U.S. Patent No. 6,574,742), hereinafter referred to as JAMROGA, filed on 10 November 2000, and issued on 3 June 2003.

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10. As per independent claims 17 and 30, JAMROGA teaches:

A method for managing specimen data reporting among specimen collection facilities, said method comprising:

receiving a specimen report from a client terminal {See JAMROGA, C7:L11-14, wherein this reads over "[b]y 'participant institution' is meant hospitals, radiology group practices, physician group practices, medical image centers, and other healthcare facilities and organizations"}, wherein the specimen report comprises a specimen description including specimen image data {See JAMROGA, C9:L23-34, wherein this reads over "[e]ach set of delivery instructions and accompanying data on database is stored and retrievable under a unique identifier or identifiers. The identifiers comprise an identification of the particular instruction set for the names participant institution"}; and

processing the specimen report in accordance with a facility identifier corresponding to the specimen collection facility at which the client terminal is located {See JAMROGA, C9:L48-59, wherein this reads over "the proxy server upon acceptance of delivery instructions automatically calculates the particular instruction sets as initial data received. Upon calculation that the requested transaction is a storage request the proxy server calculates and associates a digital signature with the received data or image"}, said processing including storing the specimen description in association with the facility identifier in a network accessible data storage device {See JAMROGA, C10:L43-52, wherein this reads over "the central database can be comprised of one or more databases located remotely from each other"}.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 18-21 and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over JAMROGA, in view of Kaltanji (USPGPUB 2004/0165791, hereinafter referred to as KALTANJI), filed on 21 February 2003, and published on 26 August 2004.

JAMROGA teaches all the limitations of claims 17 and 30 for the reasons stated above.

JAMROGA differs from the claimed invention in that JAMROGA fails to specifically disclose the use of file directories having directory names corresponding to a facility identifier (claims 18 and 31).

JAMROGA differs from the claimed invention in that JAMROGA fails to specifically disclose the representation of file directories as graphical user interface folders (claims 19 and 32).

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JAMROGA differs from the claimed invention in that JAMROGA fails to specifically disclose the storage of specimen descriptors in association with the facility identifiers (claims 20 and 33).

JAMROGA differs from the claimed invention in that JAMROGA fails to specifically disclose the copying of digital images files into a digital image library directory (claims 21 and 34).

13. **As per dependent claims 18 and 31**, JAMROGA, in combination with KALTANJI, discloses:

The method of claim 17, wherein said storing the specimen description in association with the facility identifier comprises copying the specimen description data into one or more file directories having directory names corresponding to the facility identifier {See KALTANJI, [0033], wherein this reads over "the directory name format of each sub-directory will include a unique patient identifier for that particular patient, which can include any number of indicia"}.

KALTANJI discloses a method wherein the directory name format may include any number of indicia which reflect a certain attribute or property of the data stored therein. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by KALTANJI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA could have file directories which stored specimen description data according to the facility identifiers.

14. **As per dependent claims 19 and 32**, JAMROGA, in combination with KALTANJI, discloses:

The method of claim 18, wherein the one or more file directories are represented as graphical user interface folders {See KALTANJI, Figure 2}.

KALTANJI discloses a method wherein a graphical user interface, which displays certain folders, is used. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by KALTANJI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would allow for a user to easily access the folders in the system.

15. **As per dependent claims 20 and 33**, JAMROGA, in combination with KALTANJI, discloses:

The method of claim 17, wherein said storing the specimen description in association with the facility identifier comprises associating the specimen description with the

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facility identifier in one or more database records {See KALTANJI, [0036], wherein this reads over "[t]he file name format of each dental image file will typically include a number of indicia such as a patient identifier, a file creation date, a file creation time, a modification date, a description of the source from which the image was derived, and an image description"}.

KALTANJI discloses a method wherein the file name format of the images may include "a description of the source from which the image was derived." Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by KALTANJI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would comprise of the database records which identified the source facility identifier by associating the specimen description with a facility identifier.

16. **As per dependent claims 21 and 34**, JAMROGA, in combination with KALTANJI, discloses:

The method of claim 18, wherein the specimen image data is contained in one or more digital image files, said copying the specimen description into one or more file directories further comprising copying the one or more digital image files into a digital image library directory, the digital image library directory having a directory name corresponding to the facility identifier {See JAMROGA, C10:L43-52, wherein this reads over "the central database can be comprised of one or more databases located remotely from each other, each acting as a redundant back-up database for the other for purposes of storing data and images for retrieval in case of disaster or destruction of the other database"}.

KALTANJI discloses a method for have more than one database for the purposes of "a redundant back-up database." Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by KALTANJI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would further comprise of a digital image library directory wherein digital images are copied into.

17. **Claim 22, 24-26 and 35-38** are rejected under 35 U.S.C. 103(a) as being unpatentable over JAMROGA, in view of Imai et al (U.S. Patent No. 5,987,510, hereinafter referred to as IMAI), filed on 8 November 1996, and issued on 16 November 1999.

JAMROGA teaches all the limitations of claims 17 and 30 for the reasons stated above.

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JAMROGA differs from the claimed invention in that JAMROGA fails to specifically disclose the processing of specimen reports in order of their priority levels (claims 22, 24-26 and 35-38).

18. As per dependent claims 22 and 35, JAMROGA, in combination with IMAI, discloses:

The method of claim 17, wherein the received specimen report further includes a priority level indicator {See IMAI, C10:L36-37, wherein this reads over "the individual data of each file can include a file size, a priority level, etc."}, said method further comprising processing the received specimen report in accordance with the priority level indicator {See IMAI, C10:L52-55, wherein this reads over "the processing is sequentially carried out for the sorted files in the priority level order"}.

IMAI discloses a method wherein the files can also include a priority level and processed accordingly. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by IMAI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would allow for specimen reports to be processed in order of their priority levels.

19. As per dependent claims 24 and 36, JAMROGA, in combination with IMAI, discloses:

The method of claim 22, wherein said processing the received specimen report in accordance with the priority level indicator comprises storing the specimen report in association with the priority level indicator in a network accessible data storage device {See IMAI, C10:L36-37, wherein this reads over "the individual data of each file can include a file size, a priority level, etc."}.

IMAI discloses a method wherein the files can also include a priority level and processed accordingly. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by IMAI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would allow for specimen reports to be processed in order of their priority levels.

20. As per dependent claims 25 and 37, JAMROGA, in combination with IMAI, discloses:

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The method of claim 24, wherein said storing the specimen report in association with the priority level indicator comprises associating the priority level indicator with the specimen report {See IMAI, C10:L36-37, wherein this reads over "the individual data of each file can include a file size, a priority level, etc."} in one or more database records.

IMAI discloses a method wherein the files can also include a priority level and processed accordingly. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by IMAI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would allow for specimen reports to be processed in order of their priority levels.

21. **As per dependent claims 26 and 38**, JAMROGA, in combination with IMAI, discloses:

The method of claim 17, further comprising assigning a priority level designation to the received specimen report {See IMAI, C10:L36-37, wherein this reads over "the individual data of each file can include a file size, a priority level, etc."}.

IMAI discloses a method wherein the files can also include a priority level and processed accordingly. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the invention disclosed by IMAI.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would allow for specimen reports to be processed in order of their priority levels.

22. **Claims 23, 28-29 and 40-41** are rejected under 35 U.S.C. 103(a) as being unpatentable over JAMROGA, in view of IMAI, and in further view of Payne et al (U.S. Patent No. 6,021,433, hereinafter referred to as PAYNE), filed on 24 January 1997, and issued on 1 February 2000.

JAMROGA teaches all the limitations of claims 17 and 30 for the reasons stated above.

JAMROGA differs from the claimed invention in that JAMROGA fails to specifically disclose the use of audio alert signals and alert messages (claims 23, 28-29 and 40-41).

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23. **As per dependent claim 23**, JAMROGA, in combination with IMAI and PAYNE, discloses:

The method of claim 22, wherein the priority level indicator included with the specimen report is selected from among priority level indicia representing levels of urgency associated with the specimen report {See IMAI, C10:L36-37, wherein this reads over "the individual data of each file can include a file size, a priority level, etc."}, said processing the received specimen report in accordance with the priority level indicator comprising triggering an audio alert signal in accordance with the level of urgency represented by the priority level indicator included with the received specimen report {See PAYNE, C30:L9-13, wherein this reads over "[w]hen the alert message is received . . . an animated visual and/or audio notification is triggered"}.

PAYNE discloses a method wherein an audio notification may be associated with a certain priority level indicator. It would have been obvious to one of ordinary skill in the art to have different audio notifications associated with the priority level indicators according to the level of urgency represented by the priority level indicators. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the inventions disclosed by IMAI and PAYNE.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would further alert a user which an audio alert signal in accordance with the level of urgency.

24. **As per dependent claims 28 and 40**, JAMROGA, in combination with IMAI and PAYNE, discloses:

The method of claim 26, further comprising delivering an alert message to at least one other specimen collection facility, wherein the alert message includes the specimen description associated with the facility identifier and the priority level designation {See PAYNE, C30:L17-24, wherein this reads over "the alert is not limited to the provider ID code number and name. Rather, the E-mail alert could include a header, whole message, etc"}.

PAYNE discloses a method wherein an alert message is sent include a variety of related information. It would have been obvious to one of ordinary skill in the art to have the alert message include a description of the specimen and the priority level. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the inventions disclosed by IMAI and PAYNE.

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One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would further disclose to a user the priority level and a description of the specimen in an alert message.

25. **As per dependent claims 29 and 41**, JAMROGA, in combination with IMAI and PAYNE, discloses:

The method of claim 28, further comprising, responsive to said delivering an alert message to at least one other specimen collection facility, storing an alert message status record {See PAYNE, C30:L17-24, wherein this reads over "the date and time the alert was received"}.

PAYNE discloses a method wherein an alert message may be delivered to another specimen collection facility, and an alert message status record is stored (i.e. the date and time the alert was received may be stored). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the inventions disclosed by IMAI and PAYNE.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would further comprise of delivering an alert message to other specimen collection facilities and storing an alert message status record.

26. **Claims 27 and 39** are rejected under 35 U.S.C. 103(a) as being unpatentable over JAMROGA, in view of IMAI, and in further view of Ecker et al (USPGPUB 2003/0082539, hereinafter referred to as ECKER), filed on 26 June 2001, and published on 1 May 2003.

JAMROGA teaches all the limitations of claims 17 and 30 for the reasons stated above.

JAMROGA differs from the claimed invention in that JAMROGA fails to specifically disclose the determination and assignment of epidemiological threat levels for specimens (claims 27 and 39).

27. **As per dependent claims 27 and 39**, JAMROGA, in combination with IMAI and ECKER, discloses:

The method of claim 26, further comprising:

determining an epidemiological threat level in accordance with the specimen description {See ECKER, [0087], wherein this reads over "[c]omparison of newly observed bioagents to known

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bioagents is also possible, for examination of threat level, by comparing their BCS to those of known organisms"; and

assigning the priority level designation to the received specimen report in accordance with the determined epidemiological threat level {See IMAI, C10:L36-37, wherein this reads over "the individual data of each file can include a file size, a priority level, etc."}.

ECKER discloses a method wherein epidemiological threat levels may be assigned in accordance with the specimen description by comparing the specimens to other known bioagents. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above invention suggested by JAMROGA by combining it with the inventions disclosed by IMAI and ECKER.

One of ordinary skill in the art would have been motivated to make such a modification so that the invention disclosed in JAMROGA would further comprise of assigning certain priority levels to specimens in accordance with the epidemiological threat level so that such specimens may be processed according to their threat levels.

Conclusion

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is (571) 272-2737. The examiner can normally be reached on M-F, 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian Chase can be reached on (571) 272-4190. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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